

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.11936/2009 & CM No. 12090/2009**

% **Date of Decision: 04.05.2010**

Smt. Om Wati Petitioner
Through Mr. Anuj Aggarwal, Advocate

Versus

Govt. of NCT of Delhi & Anr. Respondent
Through Ms. Zubeda Begum, Advocate

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner, widow of late Sh. Dharam Singh has challenged the order dated 17th October, 2008 passed by the Central Administrative Tribunal, Principal Bench in OA No. 261/2008 titled as Smt. Om Wati Vs. Govt. of NCT of Delhi and Ors., dismissing her original Application seeking the arrears of pay and allowances of her

deceased husband for the period from 21st November, 1988 to 31st January, 1998 in terms of his promotion and his seniority.

The deceased husband of the petitioner was a constable and he was suspended on 17th December, 1980 on account of his arrest in a case bearing FIR No. 439 under Section 353/332/186 of IPC. By order dated 27th August, 1983, the selection grade was granted in the pay scale of Rs.260-350 w.e.f. 3.5.1982 to similarly placed constables but the result of late Sh. Dharam Singh, her husband, was held in abeyance.

The petitioner's husband was acquitted in the criminal case under Section 332/353 of IPC by order dated 12th February, 1990. Later on by order dated 15th June, 1990, it was held that suspension period of the husband of the petitioner from 17th December, 1980 to 23rd March, 1981 be treated as spent on duty for all purposes as no departmental action appears to be feasible against him and therefore, it was ordered that he will be entitled for full pay and allowance for the said period. The Departmental inquiry ordered against him was also dropped. The petitioner's husband who was placed under suspension w.e.f. 29th September, 1984 was also reinstated by order dated 10th September, 1985 and later on, by order dated 8th April, 1988, he was promoted as head constable.

A show cause notice dated 23rd August, 1988 had also been issued to the petitioner's husband to revert him to the rank of constable and he was reverted as constable from head constable by order dated 21st November, 1988 much before his acquittal by order dated 12th February, 1990. The petitioner's husband was reverted on account of pendency of the criminal case against him. Against the order of reversion, an appeal was filed by the husband of the petitioner, which was also decided and a memo dated 13th January, 1989 was issued holding that the case of promotion of the petitioner's husband will be reconsidered on finalization of the criminal case pending against him.

Later on the order of reversion of the petitioner's husband dated 21st November, 1988 was withdrawn and he was granted proforma promotion for the period from 21st November, 1988 to the date of his superannuation on 31st January, 1998. The order categorically stipulated that while granting proforma promotion, he would not be entitled to draw any arrears of pay and allowances, however, the period would be counted towards fixation of pay, increments and seniority etc. This order granting proforma promotion for the period 21st November, 1988 to 31st January, 1998 without entitlement to draw arrears of pay and allowances was not challenged by the petitioner's husband.

The criminal case against the petitioner's husband was also disposed of on 17th December, 2004 under Section 498A r/w Section 4 of the Dowry Prohibition Act, holding that in the absence of corroboration of material particulars, it would be hazardous to convict the petitioner's husband and so he was acquitted.

The order granting proforma promotion for the period 21st November, 1988 up to the date of superannuation dated 31st January, 1998 without entitlement of pay and allowances was challenged and which was contested by the respondents contending, *inter alia*, that during the said period, the petitioner's husband had not shouldered higher responsibility and he was not implicated at the instance of the Department and in the circumstances, it could not be said that he was a willing employee and had been kept away from promotion because of the conduct of the department.

The learned counsel for the petitioner also relied on Union of India Vs. K.V. Jankiraman & Ors., AIR 1991 SC 2010 and Sh. Satpal Vs. Chief of Army Staff, 94 (2001) DLT 521, to contend that the petitioner is entitled for all the arrears of pay and allowance during the period 21st November, 1988 up to 31st January, 1998.

The Tribunal, after considering the pleas and contentions, has held that if the benefits had been denied because of pure departmental

action, which if, was found to be not sustainable, ultimately, an employee may be entitled for claim of arrears of pay notwithstanding the circumstance that the employee had not discharged duties of a higher post. The Tribunal also held that since, the husband of the petitioner was denied work on account of departmental action, but it was on account of registration of a case under Section 498A and Section 4 of the Dowry Prohibition Act, from which the husband of the petitioner was acquitted on account of absence of corroboration of material particulars, therefore, it could not be held that the petitioner's husband was willing to discharge his duties attached to the post of head constable although he was working only as a constable and his reversion was irregular and consequently denied the relief to the petitioner.

The learned counsel for the petitioner has very emphatically contended and relied on Jankiraman (Supra), holding that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of higher post along with other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings.

This Court has heard the learned counsel for the petitioner. This is not disputed that the order cancelling the reversion of the

husband of the petitioner from head constable to constable was granted subject to proforma promotion only to her husband for the period 21st November, 1988 up to the date of his superannuation on 31st January, 1998, which was also passed subject to other condition that her husband would not be entitled to draw any arrears of pay and allowances which order was not challenged by him.

If the husband of the petitioner had not challenged the said order, it will be difficult to sustain the challenge on behalf of the petitioner, her widow. In any case, in Jankiraman (supra), it was held that where the proceedings whether disciplinary or criminal are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with any benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc., in such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it, the order may be passed.

The criminal case against the husband of the petitioner under Section 498A of the IPC r/w Section 4 of the Dowry Prohibition Act was disposed of by order dated 17th December, 2004 as there had been absence of corroboration material particulars and it was held that it would be hazardous to convict the husband of the petitioner. On

account of such observation, if the order was passed cancelling the reversion of the husband of the petitioner from head constable to constable subject to only proforma promotion given to him for the period 21st November, 1988 up to the date of his superannuation on 31st January, 1988 with further specific stipulation that he would not be entitled to draw any arrears of pay and allowances, which order had also not been challenged by the husband of the petitioner, it will not be appropriate at the instance of the petitioner to hold that the authorities did not have the power to decide whether the petitioner's husband did deserved salary for the intervening period and after her life petitioner is entitled for the salary. In the circumstances, this Court does not find any fault with the reasoning of the Tribunal upholding the order of the respondents not granting arrears of pay and allowances for the period 21st November, 1988 to 31st January, 1998 and only approving proforma promotion to her husband which was also not challenged by her husband.

For the foregoing reasons, this Court does not find any such illegality or irregularity or perversity in the order of the Tribunal dated 17th October, 2008 in OA 261/2008 titled as Smt. Om Wati Vs. Govt. of NCT of Delhi, which will require any interference by this Court.

The writ petition is without any merit and it is, therefore,
dismissed.

ANIL KUMAR, J.

MAY 04, 2010

‘rs’

MOOL CHAND GARG, J.